Supreme Court, U.S.
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No. 87-873

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNION DE TRANSPORTS AERIENS,

Petitioner,

—against—

ROBERT M. BECKMAN, ESQ.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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QUESTIONS PRESENTED

I. Under Fed.R.Civ.P. 11 relating to sanctions for an attorney's misstatements in pleadings, is it required as a matter of law or merely discretionary for a district court to find that an attorney violated Rule 11 when, on undisputed facts, an attorney certified and later misused pleadings which he knew to be false?

II. Is the correct standard of appellate review in Rule 11 cases a *de novo* determination of whether specific conduct violates the Rule or rather, as the court of appeals below held, limited to ascertaining whether the district court abused its wide discretion in determining whether grounds exist to support Rule 11 sanctions?

LIST OF PARTIES

In addition to petitioner and respondent, parties to the proceedings in the Court of Appeals for the District of Columbia Circuit whose judgment is sought to be reviewed included the parties set out at pages 23a-26a of the Appendix. None of these parties was a party to the appeal of the Rule 11 sanction motion which is the subject of this petition.

Pursuant to Supreme Court Rule 28.1, to the knowledge of Counsel, Union de Transports Aeriens has no parent, subsidiary or affiliate having outstanding securities in the hands of the public in the United States.

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IN THE

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No. _____

UNION DE TRANSPORTS AERIENS,

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—against—

ROBERT M. BECKMAN, ESQ.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner Union de Transports Aeriens respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit, entered in *Adams v. Pan American World Airways, Inc.* on September 1, 1987.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit is reported at 828 F.2d 24 and it is reprinted at page 1a of the Appendix to this petition.

The memorandum opinion of the District Court for the District of Columbia (Green, D.J.) from which appeal was taken is reported at 640 F. Supp. 683. It is reprinted in the Appendix hereto, p. 17a.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on September 1, 1987. Petition for rehearing was denied on October 23, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RULE INVOLVED

Rule 11 of the Federal Rules of Civil Procedure provides in pertinent part:

> . . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

STATEMENT OF THE CASE

In the civil action from which this petition arises (*Adams v. Pan American World Airways, Inc.*, Civil Action Nos. 86-0304, 86-0629), the plaintiffs are all former employees of the "Laker Group of Companies" who invoked the jurisdiction of the United States District Court for the District of Columbia under 28 U.S.C. § 1337 seeking treble damages for injuries purportedly sustained as a result of an alleged price-fixing conspiracy among defendant airlines to eliminate Laker Air-

ways as a competitor. This antitrust litigation is based on the same operative facts as those in an earlier litigation commenced in the same district court in 1983 by the liquidator for Laker Airways. *Laker Airways Ltd. v. Union de Transports Aeriens, et al.*, Civil Action No. 83-2791, consolidated with Civil Action Nos. 82-3362, 83-0416 (hereinafter "*Laker I*"). *Laker I* was settled in 1985. Respondent Robert M. Beckman, counsel for plaintiffs in the instant action, was also counsel for the plaintiff in *Laker I*.

In this action, petitioner Union de Transports Aeriens (hereinafter "UTA") moved the district court for an order pursuant to Federal Rule of Civil Procedure 11 granting sanctions against respondent for signing a complaint containing allegations about UTA which he knew to be false.

Respondent prepared and signed the original complaint in this action alleging that UTA competed with Laker Airways and was a participant in the alleged price-fixing conspiracy. It is conceded that Mr. Beckman had personal knowledge that these allegations were untrue. Indeed, Mr. Beckman admitted in the court below that he knew these allegations were false having "learned from discovery [in Laker I] that UTA did not compete directly on international routes with Laker Airways and was not a participant in the price-fixing by other defendants . . ." (Brief of Cross-Appellee filed December 29, 1986, p. 5). Notwithstanding that Mr. Beckman knew the allegations to be false (which he justified as an error made in haste in preparing the complaint), once the matter was called to his attention, he continued to rely on the false assertions in resisting a motion to dismiss the complaint. It was only after a formal demand that he moved to amend the complaint.

Thus, the case before the court of appeals was not a case where counsel, acting in haste to meet a deadline, conducted an incomplete investigation of the factual accuracy of the allegations before filing a complaint. There was no need to investigate—respondent already had actual knowledge of the operative facts well before he signed the instant complaint. In

fact, respondent had personally conducted the deposition of UTA's chief executive wherein UTA's route maps were examined, and he had signed sworn interrogatory responses in *Laker I* conceding that UTA did not compete with Laker Airways and did not participate in any alleged price-fixing in the transatlantic market (*see* Appendix at pp. 27a-29a). As the court of appeals noted, "[t]he only market where an illegal restraint is alleged to have taken place is the transatlantic air transportation market," and "UTA's only service originating in the United States was between Los Angeles and Tahiti." *Adams v. Pan American World Airways, Inc.*, 828 F.2d 24, 27 and 32 (D.C. Cir. 1987), Appendix at pp. 6a, 16a.

Respondent urged the courts below to conclude that his conduct was the result of simple oversight. This facile explanation is belied by the fact that when the false allegations were detailed in the supplemental memorandum filed by UTA in support of defendants' motion to dismiss, Mr. Beckman responded, not by correcting the erroneous allegations, but by asserting that UTA had raised an issue of fact requiring the resumption of discovery. This response was manifestly intentional and can hardly be deemed inadvertent.

In a memorandum opinion dated June 30, 1986, Judge Harold H. Greene of the district court denied UTA's motion pursuant to Rule 11 for sanctions against Mr. Beckman. Judge Greene made no findings—he simply denied the motion without explanation. Appendix at p. 22a. Petitioner appealed this decision to the United States Court of Appeals for the District of Columbia Circuit. On September 1, 1987, the court of appeals affirmed the decision of the district court holding that although the decision of the district court was "lamentably terse," its review of the matter was limited to whether the district court had abused its "wide discretion."[1] Appendix at p. 16a.

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1 It is only the affirmance of the district court's decision regarding UTA's motion for sanctions that is the subject of this petition by UTA. UTA raises no question with respect to the court of appeal's affirmance of the district court's dismissal of the complaint based upon plaintiff's lack of standing (which was correctly decided in the same opinion by the court of appeals in a consolidated appeal).

REASONS FOR GRANTING THE WRIT

THE CONFLICT AMONG THE CIRCUIT COURTS OVER THE STANDARD OF REVIEW IN RULE 11 SANCTION CASES HAS INHIBITED ACCOMPLISHMENT OF THE RULE'S BENEFICIAL PURPOSE

An important conflict has arisen among the circuit courts of appeals over the appropriate standard of review in sanction cases under Rule 11 of the Federal Rules of Civil Procedure. Although the facts before the Court of Appeals for the District of Columbia Circuit in the instant action were undisputed, the court of appeals held that it was powerless to overturn the ruling of the district court denying Rule 11 sanctions unless there had been an abuse of the "wide discretion" of the district court. *Adams v. Pan American World Airways, Inc.*, 828 F.2d 24, 32 (D.C. Cir. 1987), Appendix at p. 16a. The United States Courts of Appeals for the Second Circuit and the Ninth Circuit have reached the contrary conclusion, holding that whether specific conduct violates Rule 11 is plainly a legal issue and therefore reviewable *de novo*. *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, 254 n.7 (2d Cir. 1985); *Hudson v. Moore Business Forms, Inc.*, 827 F.2d 450, 453 (9th Cir. 1987); *Golden Eagle Distributing Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1538 (9th Cir. 1986). (The positions of the other circuit courts of appeals are stated *infra* at pp. 8-10).

If allowed to stand uncorrected, the decision of the court of appeals will perpetuate the serious conflict among the circuits over the appropriate standard of review in Rule 11 cases. To permit this conflict over the proper standard of review to continue undermines the very purpose behind the 1983 amendment to the Rule. The essential purpose underlying the imposition of Rule 11 sanctions is to deter abusive litigation practices which tend to impose unjustified burdens on other parties, frustrate those who seek to vindicate their rights in court, obstruct the judicial process, and bring the civil justice system into disrepute. *See* Schwarzer, *Sanctions Under the New Federal Rule 11—A Closer Look*, 104 F.R.D. 181, 181-183 (1985).

Because the earlier rule had proven ineffective in curbing frivolous litigation and abusive practices, the 1983 amendment made significant changes in Rule 11: (1) it imposes an affirmative duty upon each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed;[2] (2) it tests the knowledge of the attorney by a reasonableness standard instead of requiring a finding of subjective bad faith;[3] and (3) by employing the imperative "shall" it stresses the mandatory nature of the imposition of sanctions when the Rule has been violated.[4] The amendment was "intended to reduce the reluctance of courts to impose sanctions . . . by emphasizing the responsibilities of the attorney. . . ." Notes of Advisory Committee on Rules, Rule 11, 1983 Amendment.[5]

To refuse to sanction an attorney who certifies that the complaint, to the best of his knowledge, information, and belief formed after reasonable inquiry, is well grounded in fact, when the attorney has actual knowledge that serious allegations in the complaint are false, plainly violates the clear mandate of Rule 11 which requires the district court to impose sanctions if there is a violation of Rule 11. If circuit courts of appeals believe that the scope of their review of Rule 11 cases is

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2 *Eastway Construction Corp. v. City of New York*, 762 F.2d at 253.

3 *Id.* at 253-254; *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 829 (9th Cir. 1986).

4 *Eastway Construction Corp. v. City of New York*, 762 F.2d at 254 n.7; *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174 (D.C. Cir. 1985).

5 During the first two years alone following the adoption of the 1983 amendment, there were 233 reported district court cases in which sanctions under Rule 11 were considered. Furthermore, since relatively few district court opinions are published and since publication of a decision imposing sanctions against a lawyer may itself be regarded as a sanction, the actual number of Rule 11 decisions far exceeds those available through computerized legal research systems or in published form. Nelken, *Sanctions Under Amended Federal Rule 11—Some "Chilling" Problems in the Struggle Between Compensation and Punishment*, 74 Geo. L.J. 1313, 1326 (1986).

limited to an abuse of discretion standard and fail to exercise their powers of *de novo* review, the public is effectively denied the full and proper scope of judicial authority to assure that the beneficial purpose for which Rule 11 was devised is satisfied.

Petitioner does not dispute that the type of sanction to be imposed lies within the discretion of the district court and that the court of appeals can overturn such a determination only upon a finding that the district court has abused its discretion. Indeed, the circuits appear to be in agreement on this point. However, in this case, there was no challenge regarding the appropriateness of the Rule 11 sanction before the Court of Appeals for the District of Columbia Circuit since the district court never imposed sanctions in any form. The issues on appeal to the Court of Appeals for the District of Columbia Circuit were whether the undisputed conduct of plaintiffs' counsel, in signing a pleading containing allegations he knew to be false and misusing that pleading after being apprised of its falsity, violated Rule 11 and, if so, whether sanctions were therefore mandatory. The court of appeals affirmed the district court's denial of sanctions, applying an incorrect standard of review, *i.e.*, whether the district court had abused its discretion. Because the court of appeals in this case adopted an abuse of discretion standard, it evidently felt itself powerless to rectify a patent violation of the attorney's obligations under Rule 11.[6]

Although the facts in this proceeding are undisputed, the Court of Appeals for the District of Columbia Circuit held that the proper scope of its review of the district court's decision is limited to whether the district court has abused its discretion. 828 F.2d at 32, Appendix at p. 16a. In support of its position,

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6 The opinion of the court of appeals seems to suggest that since the false allegations were ultimately corrected, their certification by respondent was therefore excused. This reasoning, if adopted, would emasculate Rule 11, which seeks to deter such conduct by attorneys in the first instance.

the court of appeals cited its earlier decision in *Westmoreland v. CBS, Inc.*, 770 F.2d 1168 (D.C. Cir. 1985). In *Westmoreland*, the court of appeals stated: "In determining whether factual . . . reasons exist which may give rise to invocation of Rule 11 sanctions, the district court is accorded wide discretion." *Id.* at 1174.[7] Other courts of appeals have erroneously adopted the *Westmoreland* test. Citing *Westmoreland*, the Sixth Circuit also employed an abuse of discretion standard in reviewing a district court's denial of a motion for sanctions pursuant to Rule 11 based upon an insufficient pretrial factual investigation. *Albright v. Upjohn Co.*, 788 F.2d 1217, 1221-1222 (6th Cir. 1986). In addition, the Court of Appeals for the Eleventh Circuit has indicated its agreement with the scope of appellate review announced in *Westmoreland*. *See Donaldson v. Clark*, 819 F.2d 1551, 1556 (11th Cir. 1987).

An abuse of discretion standard also has been adopted by the Fourth Circuit and the Seventh Circuit in reviewing whether a district court properly imposed sanctions. "[A] district court's imposition of Rule 11 sanctions is ordinarily entitled to deference by this Court and may not be disturbed except for abuse of discretion." *Stevens v. Lawyers Mutual Liability Insurance Co. of North Carolina*, 789 F.2d 1056, 1060 (4th Cir. 1986); *see also Cleveland Demolition Co. v. Azcon Scrap Corp.*, 827 F.2d 984, 987 (4th Cir. 1987). *See, e.g., Ordower v. Feldman*, 826 F.2d 1569, 1574 (7th Cir. 1987); *R.K. Harp Investment Corp. v. McQuade*, 825 F.2d 1101, 1103 (7th Cir. 1987) for the Seventh Circuit's adoption of the abuse of discretion standard.

Other circuits, however, apply a very different standard of review, which petitioner submits should be established by this Court as the proper standard. According to the Court of Appeals for the Ninth Circuit:

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7 In *Westmoreland*, the court of appeals held that it is empowered to conduct *de novo* review only when the district court has determined whether a pleading or motion is *legally* sufficient, since that involves a question of law. 770 F.2d at 1175.

> Because Rule 11 mandates sanctions when it is violated, the prevailing view of the courts of appeals is that whether specific conduct violated the Rule is *a legal question which must be reviewed de novo.*

Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d at 1538, emphasis added. The issue of whether specific conduct violates Rule 11 is a question of law, *Greenberg v. Sala*, 822 F.2d 882, 885 (9th Cir. 1987), not a matter lying within the exercise of the discretion of the district court. Recently, the Fifth Circuit also held that the legal conclusion of a district court that a particular set of facts constitutes a violation of Rule 11 is reviewed *de novo*. *Robinson v. National Cash Register Co.*, 808 F.2d 1119, 1126 (5th Cir. 1987); *Thomas v. Capital Security Services, Inc.*, 812 F.2d 984, 989 (5th Cir. 1987).[8] The *de novo* review standard is consistent with that adopted by the Second Circuit in *Eastway Construction Corp. v. City of New York*, 762 F.2d 243, where it held:

> A natural concomitant of a mandatory imposition of sanctions is a broadened scope of review by the Court of Appeals. Where the only question on appeal becomes whether, in fact, a pleading was groundless, we are in as good a position to determine the answer and, thus, we need not defer to the lower court's opinion.

Id. at 254 n.7.

The Ninth Circuit, in articulating standards of review in Rule 11 cases, has noted that appellate review of orders imposing or denying sanctions under Rule 11 may require a number of separate inquiries. *Hudson v. Moore Business*

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8 Prior to these decisions, the Fifth Circuit had held that review by the court of appeals of a decision imposing sanctions is limited to determining whether the district court abused its discretion. *Davis v. Vesland Enterprises*, 765 F.2d 494, 500 (5th Cir. 1985). The Fifth Circuit has determined to rehear *Thomas, en banc*, in order to clarify the proper standard of review. *See Shivangi v. Dean Witter Reynolds, Inc.*, 825 F.2d 885, 891 (5th Cir. 1987). These recent holdings highlight the ongoing struggle within the circuits to find the appropriate standard of review in Rule 11 cases.

Forms, Inc., 827 F.2d at 453; *Zaldivar v. City of Los Angeles*, 780 F.2d 823, 828 (9th Cir. 1986). If the facts relied upon by the district court to establish a violation of Rule 11 are challenged on appeal, the court of appeals must review these factual determinations of the district court under a clearly erroneous standard. *Id.* However, if the legal conclusion of the district court as to whether those facts establish a violation of Rule 11 is disputed, then the court of appeals must review that legal conclusion *de novo*. *Id.* It is only when the appropriateness or severity of the sanction itself is challenged that the court of appeals' review is limited to the inquiry as to whether the district court has abused its discretion. *Id.*[9] This tripartite standard of review articulated in *Zaldivar* was expressly adopted by the Court of Appeals for the Eighth Circuit in *Kurkowski v. Volcker*, 819 F.2d 201, 203 n.8 (8th Cir. 1987).

The issues in this case afford the Court an opportunity to resolve the serious conflict among the circuit courts of appeals concerning the appropriate standard for reviewing the legal conclusions of district courts as to whether specific conduct violates Rule 11. The perpetuation of this most basic conflict undermines the very purpose of the 1983 amendment to Rule 11 and can only result in more confusion among the district courts, inconsistent applications of the Rule, frustrated litigants and a disillusioned public. A resolution of this conflict will bring clarity and certainty to this important matter and will more certainly assure that the salutary purposes underlying Rule 11 will be fulfilled.

In the instant case, it is undisputed that when Mr. Beckman framed the complaint asserting that UTA competed with Laker

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9 Petitioner has found no disagreement among the circuits with respect to the discretion afforded the district courts in fashioning an appropriate sanction. *Cf. Westmoreland v. CBS, Inc.*, 770 F.2d at 1174 (District of Columbia Circuit); *Albright v. Upjohn*, 788 F.2d at 1222 (Sixth Circuit); *Eastway Construction Corp. v. City of New York*, 762 F.2d at 254 n.7 (Second Circuit); *Davis v. Vesland Enterprises*, 765 F.2d at 500-501 (Fifth Circuit).

Airways and had joined in a predatory price-fixing conspiracy against Laker, he knew that UTA did not compete with Laker and had not joined in any way in the price-fixing activities alleged in the complaint. It is furthermore undisputed that Beckman used these allegations (which he knew to be false) to defend against a motion to dismiss. The significance of the standard of review is therefore crucial in this case. Under a sweeping "abuse of discretion" standard, the knowing violation in this case of the attorney's obligations becomes nonreviewable (notwithstanding the mandate of Rule 11 regarding groundless pleadings). On the other hand, under the *de novo* standard of review, the court of appeals is compelled to find a violation of Rule 11 and hence to vindicate the overriding objectives of deterring litigation abuses and the consequent bringing of the civil justice system into disrepute.

Moreover, failure to enforce rigorously the policy of Rule 11 in a case involving foreign litigants could well create concerns involving international comity. *Cf. Societe Nationale Industrielle Aerospatiale v. United States District Court for the Southern District of Iowa*, ____ U.S. ____, 107 S.Ct. 2542, 2557 (1987).

CONCLUSION

The Court of Appeals for the District of Columbia Circuit incorrectly applied an abuse of discretion standard in reviewing the decision of the district court denying petitioner's motion for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. Whether specific conduct violates the mandate of Rule 11 is a question of law and therefore must be reviewed *de novo*. Further, the existing conflict among the circuit courts of appeals is undermining the fundamental purpose of the 1983 amendment to Rule 11. For these reasons, petitioner prays that a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 86-5468

DAVID WEAVER ADAMS, et al.,

Appellants

V.

PAN AMERICAN WORLD AIRWAYS, INC.
a domestic corporation, et al.

No. 86-5469

JOHN ERIC CLIFTON, et al.,

Appellants

V.

PAN AMERICAN WORLD AIRWAYS, INC.
a domestic corporation, et al.

No. 86-5538

JOHN ERIC CLIFTON, et al.

V.

PAN AMERICAN WORLD AIRWAYS, INC.,
a domestic corporation, et al.
UNION DE TRANSPORTS AERIENS,

Appellant

No. 86-5540

DAVID WEAVER ADAMS, et al.

V.

PAN AMERICAN WORLD AIRWAYS, INC.,
a domestic corporation, et al.
UNION DE TRANSPORTS AERIENS,

Appellant

Appeals from the United States District Court
for the District of Columbia
(Civil Action Nos. 86-00304 and 86-00629)

Argued March 20, 1987

Decided September 1, 1987

ROBERT M. BECKMAN, with whom DAVID M. KIRSTEIN was on the brief for appellants, David Weaver Adams, et al. in Nos. 86-5468 and 86-5469.

SIDNEY S. ROSDEITCHER, with whom LEONARD M. BEBCHICK, GARY D. WILSON, CAROL LEE, ROBERT B. VON MEHREN, ROBERT J. GENIESSE, FRED D. TURNAGE, MICHAEL W. DOLAN, DOUGLAS ROSENTHAL, WILLARD K. TOM, JAMES J. MURPHY, DAVID G. FEHER, LAWRENCE A. SHORT, WILLIAM KARAS, DAVID H. COBURN, ROBERT J. HIGGINS, JAMES VAN R. SPRINGER, EUGENE M. GOOTT, JOHN W. DICKEY, MARK MCCALL, VESELIN M. SCEKIC, ROBERT FABRIKANT and CELESTINO PINA were on the brief for appellees, Pan American, et al. in Nos. 86-5468 and 86-5469.

SANFORD C. MILLER, with whom MAURICE J. NOYER and JOHN MCCONNELL were on the brief for Union de Transports Aeriens, cross-appellant in Nos. 86-5548 and 86-5540 and appellee in Nos. 86-5468 and 86-5469.

JACOB A. STEIN, with whom PATRICK A. MALONE was on the brief for cross-appellee, Robert Beckman, in Nos. 86-5540 and 86-5538. GEORGE T. MANNING and CHARLES P. MURDTER also entered appearances for cross-appellee.

Before:

RUTH B. GINSBURG and WILLIAMS, *Circuit Judges*, and MCGOWAN, *Senior Circuit Judge*.

Opinion for the Court filed by Circuit Judge WILLIAMS.

WILLIAMS, Circuit Judge: This action is the fourth in a series of antitrust suits spawned by the collapse of Laker Airways Limited. The core allegation in each suit is that a group of airlines, an aircraft manufacturer and the latter's subsidiary conspired to drive Laker out of business, in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. Sections 1 and 2 (1982 and Supp. III 1985).[1] The first set of actions, *Laker I*,[2] was brought by Laker itself and culminated in a settlement requiring defendants to pay substantial sums to Laker's stockholders, creditors, and attorneys. *See Adams v. Pan American World Airways, Inc.*, 640 F. Supp. 683, 684 (D.D.C. 1986). The second, *Laker II*, was initiated by a class of transatlantic travelers asserting that the destruction of Laker forced them travel on more expensive airlines. This too was settled, with the defendants establishing a fund to provide

1 The persons named as defendants vary slightly from case to case.

2 *Laker Airways Ltd. v. Pan American World Airways, Inc.*, No. 82-3362 (D.D.C. filed Nov. 24, 1982); *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, No. 83-0416 (D.D.C. filed Feb. 15, 1983); *Laker Airways Ltd. v. Union de Transport Aeriens*, No. 83-2791 (D.D.C. filed Sept. 22, 1983).

plaintiffs reduced airfares for a five-year period. *In re Atlantic Air Travel Antitrust Litigation*, No. 84-1013, mem. order (March 18, 1986 D.D.C.) (approving settlement). The third, *Laker III*, was brought by a travel agent claiming that the demise of Laker caused it to lose business. This action was dismissed for want of standing. *Brian Clewer, Inc. v. Pan American World Airways, Inc.*, No. 86-119 (C.D. Cal. May 21, 1986), *aff'd*, No. 86-6003 (9th Cir. Feb. 12, 1987).

Plaintiffs in the present action, a group of 313 former Laker employees,[3] allege that the illegal conspiracy cost them their jobs. As recompense they seek treble damages under Section 4 of the Clayton Act, 15 U.S.C. Section 15 (1982). The District Court concluded that plaintiffs lacked standing to bring an antitrust action and granted defendants' motion to dismiss. *Adams v. Pan American World Airways, Inc.*, 640 F. Supp. at 684-86. We affirm.

I.

Section 4 of the Clayton Act permits "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws" to bring a treble-damages action. 15 U.S.C. Section 15(a). This language, however, has never been read literally to allow suit by every party affected by an antitrust violation's "ripples of harm." *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 476-77 (1982).

The first prerequisite of maintaining a Section 4 action is that the plaintiff have suffered the *kind* of injury the antitrust laws were designed to prevent. "The antitrust laws . . . were enacted for 'the protection of *competition*, not *competitors*.' " *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488, 97 S.Ct. 690, 697, 50 L.Ed.2d 701 (1977) (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 320, 82 S.Ct. 1502, 1521, 8 L.Ed.2d 510 (1962)) (emphasis in original). Thus, only

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3 Plaintiffs represent the full range of personnel employed by a major airline, from pilots and flight attendants to managers, administrators and reservation agents, to engineers, mechanics and shop personnel. *Adams* Complaint Paragraphs 3-300M, Joint Appendix ("J.A.") at 44-150.

harm stemming from a reduction in competition qualifies as injury cognizable under the antitrust laws. *E.g.*, *id.*; *see also Cargill, Inc. v. Monfort of Colorado, Inc.*, ____ U.S. ____, 107 S.Ct. 484, 93 L.Ed.2d 427 (1986) (extending *Brunswick* to claim for injunctive relief under Section 16 of the Clayton Act, 15 U.S.C. Section 26 (1982)).

In addition to alleging "antitrust injury," the would-be claimant must show that it is a "proper plaintiff." *See Cargill*, 107 S.Ct. at 489 n.5; *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 535-46, 103 S.Ct. 897, 907-13, 74 L.Ed.2d 723 (1983). The Court's guiding principle has been to exclude as plaintiffs those whose suits might "undermine[ ] the effectiveness of treble-damages suits." *Associated General*, 459 U.S. at 545, 103 S.Ct. at 912 (citing *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 745, 97 S.Ct. 2061, 2074, 52 L.Ed.2d 707 (1977)). Claims of remote victims could severely complicate an action by more direct ones, raising the latters' costs of suit. Further, the interest in avoiding multiple recoveries may force courts to reduce awards to the direct victims. These impairments of direct victims' incentive to sue could jeopardize the effectiveness of the treble-damage claim. *Associated General*, 459 U.S. at 544-46, 103 S.Ct. at 911-13; *Blue Shield of Virginia v. McCready*, 457 U.S. at 475 n.11, 102 S.Ct. at 2546 n.11; *Illinois Brick*, 431 U.S. at 745, 97 S.Ct. at 2074; *cf. Cargill*, 107 S.Ct. at 489-90 nn.5, 6 (such concerns less relevant to suit for injunctive relief under Section 16 of the Clayton Act, as duplicative lawsuits and multiple recoveries not involved). *See generally* Page, *The Scope of Liability for Antitrust Violations*, 37 Stan.L.Rev. 1445, 1483-98 (1985); Landes & Posner, *Should Indirect Purchasers Have Standing to Sue Under the Antitrust Laws? An Economic Analysis of the Rule of Illinois Brick*, 46 U.Chi.L.Rev. 602, 608-25 (1979).

Accordingly, once plaintiff has crossed the threshold by alleging a genuine antitrust injury (one deriving from a decrease in competition), the Court directs us to consider such factors as whether the injury is direct (compared to that of other victims), whether the claim for damages is "speculative,"

and whether the case presents "the potential for duplicative recovery or complex apportionment of damages." *Associated General*, 459 U.S. at 545, 103 S.Ct. at 912; *see also id.* at 538-45, 103 S.Ct. at 908-12.[4]

While plaintiffs allege an antitrust injury, we find that the other factors controlling under *Associated General* preclude accepting them as proper plaintiffs.

II

A. ANTITRUST INJURY

The only market where an illegal restraint is alleged to have taken place is the transatlantic air transportation market. Amended *Adams* Complaint Paragraph 46, Joint Appendix ("J.A.") at 217-18. Plaintiffs supply services (their labor) to competitors selling in that market. While decreased competition will almost invariably harm consumers, its effects on suppliers such as plaintiffs are quite complex. Output is greater at competitive levels than in a cartelized market; everything else being equal, a competitive industry will require more employees, increasing job opportunities for persons such as plaintiffs. Indeed, plaintiffs represented at oral argument that *none* among them had managed to obtain employment comparable to that previously held with Laker. This suggests a direct loss from the contraction of output.

The effects do not stop there, however. Competition might conceivably raise wages. The more workers demanded (to handle higher output), the more lucrative the alternative occu-

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4 Plaintiffs vigorously assert that under the rubric of *Associated General* the defendant's specific intent to injure plaintiff is also a factor in the proper-plaintiff analysis. Although plaintiffs' position has some supporting precedent, *see Los Angeles Memorial Coliseum Commission v. National Football League*, 791 F.2d 1356, 1363 (9th Cir. 1986), we read *Associated General* as saying only that a showing of such intent may be required to establish an antitrust violation (and thus necessary to avoid a motion to dismiss, *see United States v. Columbia Steel Co.*, 334 U.S. 495, 522 and n.19, 68 S.Ct. 1107, 1121 and n.19, 92 L.Ed. 1533 (1948)), and may help focus the standing analysis. *See Associated General*, 459 U.S. at 537 and nn.35-37, 103 S.Ct. at 908 and nn.35-37.

pations from which workers must be attracted, and the higher the wages needed to attract them. But competition also generates strong pressure to cut costs, including wages. *Associated General*, 459 U.S. at 539, 103 S.Ct. at 909; *cf.* S. MORRISON & C. WINSTON, THE ECONOMIC EFFECTS OF AIRLINE DEREGULATION 43-46 (1986).[5] Workers as a group thus may well expect to do better in a cartelized industry, and may even seek to bring about cartelization.[6] *See Associated General*, 459 U.S. at 539-40, 103 S.Ct. at 909.

We cannot now determine (and probably could not even after trial) whether plaintiffs' gains from reduced competition predominate over their losses. An accurate assessment of the alleged cartelization's effect would require computation of the present discounted value of the net change in their expected income streams.[7] Even a Laker employee who has not yet obtained similar employment may do so tomorrow; if cartelization in fact raises wages, it may do so sufficiently to offset the present value of his losses (both those incurred before suit and expected to be incurred thereafter). On the other hand, it may not.

We believe that plaintiffs can properly be said to have alleged an antitrust injury—the failure to secure employment comparable to their Laker jobs from the date of Laker's folding to the filing of the complaint. Thus they have crossed

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5 The study finds a negative effect on wages. For the airlines, of course, decartelization was an aspect of deregulation. Regulation of prices on a cost-of-service basis has an independent tendency to relax cost control efforts, as firms can keep only a portion of their cost savings, so the case is not a pure test of the effects of increased competition.

6 Plaintiffs describe themselves as members of a "highly competent and highly motivated work force" willing to work for less than their counterparts employed by defendants. *See* Brief of Plaintiffs at 6. This does not support an inference that they are necessarily net losers from cartelization. If they have those attributes, they will surely be attractive candidates for jobs opening up in the cartelized transatlantic market.

7 The "expected" value of gains from cartelization would refer to the incremental wage income, discounted for the possibility that the plaintiff may secure no job because of the reduced output in the market as a whole.

the *Brunswick* threshold. But the ambiguity of cartelization's effects on their welfare fatally affects their case under the remaining factors pinpointed by *Associated General*.

B. DIRECTNESS OF INJURY

Comparison of this case with *Associated General* is complicated by "the absence of specific allegations" there. 459 U.S. at 541 n.46, 103 S.Ct. at 910 n.46. But the Court discerned two possible theories, one of which closely parallels the present case:[8] defendant association of contractors illegally coerced the victim landowners, who switched from victim union contractors to contractors employing non-union workers; the union contractors reduced hiring, causing workers to be less ready to join plaintiff union and pay dues. 459 U.S. at 541 n.46, 103 S.Ct. at 910 n.46. Here the chain is shorter: the victim Laker collapses; plaintiff employees lose their jobs. There is no need for a link paralleling the final one of *Associated General*, *i.e.*, workers responding by greater resistance to plaintiff.

But the Court appeared to denigrate the significance of the final necessary link. It observed that the harm to the union was "even more indirect than *the already indirect injury to its members*, yet a number of decisions have denied standing to employees with merely derivative injuries." *Id.* at 541 n.46, 103 S.Ct. at 910 n.46 (citations omitted) (emphasis added).

Plaintiffs here characterize the conspiracy as reaching the employees themselves. They claim that the illegal restraint weakened Laker to the point that it had to accept a coconspirator as receiver and that the coconspirator fired plaintiffs. Plaintiffs contend that this last step was vital to the alleged

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8 In the alternative theory, defendant association of contractors illegally coerced the victim landowners, who as a result switched to non-union contractors, who resisted plaintiff union's organizing efforts in order to avoid loss of business. The Court characterized this as involving injury from "the conduct of persons who are not victims of the conspiracy [the non-union contractors, who were in fact indirect beneficiaries of the conspiracy]," *id.* Plaintiffs' claim here cannot fairly be said to involve a link of that sort.

conspiracy because the competitive threat Laker posed would not die until the work force was dismantled.

This effort to remove the Laker link from the chain seems largely a matter of word play. The conspirators allegedly forced Laker to its knees. Whenever that happens to a firm, the web of contracts and relationships which form the essence of the firm will be dismantled. Astute counsel should not be able, merely by feats of characterization, to confer standing on all participants in that web.

However the final dismissal may be labelled, the harm to plaintiffs is one step removed from the harm to Laker. It follows that their claim will be more difficult to develop and prove. *See* Posner & Landes, *Should Indirect Purchasers Have Standing to Sue Under the Antitrust Laws? An Economic Analysis of the Rule of Illinois Brick*, 46 U.Chi.L.Rev. 602, 609-15 (1979) (comparing cost to indirect purchasers and direct purchasers of bringing an overcharge case). These difficulties, already alluded to, are discussed further in parts II.C and II.D below. It is a natural consequence of the extra link in the chain.

Nine years ago this court plainly classified injuries such as plaintiffs' as indirect: "Outside the context of professional sports, courts have regularly denied employees standing to sue for antitrust injuries to their employer, generally on the ground that any injury to the employee is 'indirect.' " *Smith v. Pro Football, Inc.*, 593 F.2d 1173, 1175 n.2 (D.C. Cir. 1978) (citation omitted). *Cf. Illinois Brick*, 431 U.S. 744-47, 97 S.Ct. at 2074-75 (indirect purchasers lack standing to raise antitrust claims).[9] Employees in professional sports have surmounted the standing inquiry simply because their injuries have stemmed at least in part from restraints in the labor market itself. *See, e.g., Radovich v. National Football League*, 352 U.S. 445, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957) (plaintiff alleg-

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9 Unlike *Illinois Brick*, which flatly precludes indirect purchasers from bringing antitrust actions in virtually all cases, *Associated General* does not go so far as to say that suppliers of an input never have standing to assert a claim for damages resulting from illegal restraints in their purchaser's market. *See* 459 U.S. at 540-42, 103 S.Ct. at 909-11.

edly blacklisted from employment); *Smith v. Pro Football, Inc.*, *supra* (plaintiff challenging system of restraints on his ability to sell his services to full range of competitors in market). Plaintiffs allege no such restraint in the airline labor market. *Cf. Associated General*, 459 U.S. at 527 and n.14, 103 S.Ct. at 903 and n.14 (plaintiff union alleged only a restraint in market for construction contracting and subcontracting and not in market for labor union services).

In a rare handful of cases courts have found standing for employees in the absence of restraints in the labor market. In *Ostrofe v. H.S. Crocker Co.*, 740 F.2d 739 (9th Cir. 1984), plaintiff was the victim of a boycott in the labor market, *id.* at 742-44, but the court also found separately that he had standing because his participation was essential to execution of the conspiracy and that no other party had so strong an incentive to vindicate the public interest in enforcement. *Id.* at 746-47.[10] *See also Donahue v. Pendleton Woolen Mills, Inc.*, 633 F. Supp. 1423 (S.D.N.Y. 1986) (finding standing for employees coerced into participating in illegal scheme). *But see Bichan v. Chemetron Corp.*, 681 F.2d 514 (7th Cir. 1982) (employee denied standing under similar circumstances), *cert. denied*, 460 U.S. 1016, 103 S.Ct. 1261, 75 L.Ed.2d 487 (1983). Obviously the special circumstance deemed controlling in *Ostrofe* and *Donahue*, even if we assume it is sufficient under Associated General, is absent here.

One decision antedating *Associated General* is probably not susceptible of any principled distinction. In *Dailey v. Quality School Plan, Inc.*, 380 F.2d 484 (5th Cir. 1967), the plaintiff was employed in the business of marketing magazine subscriptions to educational institutions under a "school plan," by which such institutions use students to sell subscriptions to the

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10 A prior decision in *Ostrofe*, 670 F.2d 1378 (9th Cir. 1982), was vacated and remanded by the Supreme Court for reconsideration in the light of *Associated General*. *See* 460 U.S. 1007, S.Ct. 1244, 75 L.Ed.2d 475 (1983). After the decision on remand, defendants applied for certiorari, but the case was dismissed at the request of the parties. *See* 469 U.S. 1200, 105 S.Ct. 1155, 84 L.Ed.2d 309 (1985).

public. He received a salary and commission. He lost his job following the acquisition of his employer in a merger, allegedly illegal, between two of the three largest firms in the field. The court appeared to apply two criteria. First, on the basis of plaintiff's entitlement to commissions, it found that he operated as a business rather than as a mere employee. Second, it applied a vague "proximate cause" test and stated in conclusory form that the injury was direct enough. We doubt if the case survives *Associated General*: (1) the first point has no apparent significance under *Associated General*; (2) the classification of the injury as direct seems inconsistent with *Associated General's* conclusion; and (3) the decision wholly disregards the other factors and policy values identified by *Associated General* as controlling.[11] *Cf. Eagle v. Star-Kist Foods, Inc.*, 812 F.2d 538 (9th Cir. 1987) (applying *Associated General* criteria to deny standing to employees compensated on share-of-revenue basis).

Thus, in the absence of special circumstances not present here, the cases provide no support for suit by employees of a firm victimized by antitrust violations.

Finally, the general rule against employee standing in cases involving no restraint in the labor market finds support in *Associated General's* suggestion that directness is a relative matter:

> The existence of an identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in antitrust enforcement diminishes the justification for allowing a more remote party such as the Union to perform the office of a private attorney general.

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11 *International Association of Heat & Frost Insulators & Asbestos Workers v. United Contractors Association, Inc.*, 483 F.2d 384 (3rd Cir. 1973), *amended*, 494 F.2d 1353 (3rd Cir. 1974), bears some resemblance to *Associated General*, though with the opposite outcome. Accordingly, we also doubt its viability. We note, however, that there were allegations of anticompetitive effects in the labor market itself, through use of sham agreements to thwart the plaintiff unions' organizational efforts. *See id.* at 392, 396.

459 U.S. at 542, 103 S.Ct. at 910-911. Of course the entire logic of *Associated General* supports such a relative approach: it is in large part to preserve the effectiveness of the superior plaintiffs that the inferior ones are denied standing.

Here superior plaintiffs clearly exist—both Laker itself and consumers of transatlantic air transportation. Indeed, they have already asserted claims in their own rights, received substantial settlement payments, and vindicated the public interest in antitrust enforcement.[12] *Compare Ostrofe v. H.S. Crocker Co.*, 740 F.2d at 746-47 (no one else had as strong an interest as discharged employee in vindicating public interest in antitrust enforcement) (alternative holding). Elusive as the concept of directness may be, we believe that the existence of immediate victims that suffer far less ambiguous antitrust injury militates significantly against standing for these plaintiffs.

C. Speculate Damages

We have already suggested the speculative character of plaintiffs' damages. Their job losses are real ones, and, as noted above, the expansion of output to competitive levels would (other things being equal) tend to increase their wages. But cartel participants' comparative laxity as to costs suggests that they may well ultimately secure more lucrative jobs than those that would have been available in the more competitive industry that would have resulted from the survival of Laker.

Nor is the level of competition in the industry the only relevant variable. In part plaintiffs' economic fate was tied specifically to Laker; we cannot assume its indefinite survival in an exceptionally volatile industry characterized by frequent

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12 Plaintiffs argue that because their injuries are discrete from those of Laker and its passengers, the latters' actions have not vindicated the public interest in antitrust enforcement, *i.e.*, their claims are not large enough to be an optimal deterrent. In fact, as we develop below, there is a high probability of substantial overlap between plaintiffs' injuries and those of Laker and its passengers.

mergers and bankruptcies, *see Adams v. Pan American World Airways, Inc.*, 640 F. Supp. at 685. Further, the prosperity of each of the 313 plaintiffs would depend on how long he or she would have remained with Laker, with what advancement, what salary increases, etc. Finally the court would need to consider each plaintiff's prospects of obtaining comparable employment in aviation or other industries.[13]

Plaintiffs in essence recognize the complexity of calculating their damages but claim that assessing "damages in this case is no more speculative, abstract or impractical than in personal injury cases where assessment of lost past and future earnings are routinely made by the jury." Brief of Plaintiff at 39 (citing *District of Columbia v. Barriteau*, 399 A.2d 563 (D.C. App. 1979)). But the present claim is in antitrust, not tort. Here injury turns on the impact of the alleged wrong on the relevant market itself, so that the fact finders cannot take a market structure as given, as they would in a personal injury litigation. Moreover, *Associated General* requires exclusion of marginally injured parties whose claims tend to complicate the litigation and thereby impair the effective enforcement of the antitrust laws. *See, e.g., Associated General*, 459 U.S. at 543-45, 103 S.Ct. at 911-12.

D. Risk of Duplicative Recoveries or Complex Apportionment of Damages.

In *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S.Ct. 2061, 52 L.Ed.2d 707 (1977), the Supreme Court held that an indirect customer could not bring a treble-damage action for price increases deriving from sales to its suppliers in violation of the

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13 Plaintiffs focus on their inability to obtain employment in the cartelized transatlantic air transportation market. We see no reason why they are so limited. All of them are qualified for employment in other air transportation markets, and many of their jobs with Laker have exact equivalents outside the air transportation industry.

Plaintiffs also claim to have suffered from emotional distress. If for some reason not revealed to us such injury qualified as an injury to plaintiffs' "business or property," its measurement would further complicate the litigation.

antitrust laws. Recognizing that multiple recovery should be avoided, it noted that allowance of indirect purchaser suits would compel apportionment of the recovery. Besides adding complexity to the case, this apportionment would cut down the direct purchasers' recovery and diffuse the incentive to bring treble-damage actions. *Id.* at 735-48, 97 S.Ct. at 2069-76; *see also Associated General*, 459 U.S. at 544, 103 S.Ct. at 911-12.

The present case raises a similar risk of leading either to multiple recovery or to unduly complex litigation. In *Illinois Brick*, the potential conflict was over a single amount, the illegal overcharge; to avoid multiple recoveries, it would be necessary to divide that amount between direct and indirect purchasers on some consistent theory governing the extent to which direct purchasers would pass on the overcharge and the damage recovery. Separate litigations would allow direct purchasers to recover on one set of assumptions as to elasticities, market structure and market behavior, indirect purchasers to recover on another set. *See* 431 U.S. at 741-42, 97 S.Ct. at 2072-73. This would generate powerful claims for joinder of all potential plaintiffs under Federal Rule of Civil Procedure 19, massively complicating the litigation. *Id.* at 737-41, 97 S.Ct. at 2070-72.

Here, concededly, there is no common fund in the sense of the overcharge at stake in *Illinois Brick*. But the problem of conflicting premises is no different. In *Laker I*, Laker's creditors, stockholders, and attorneys sought damages premised on a projection of high profits for Laker. In *Laker II*, Laker's passengers asserted damages premised on Laker's fares being exceptionally low. Laker's employees now seek to collect damages premised on plentiful jobs and generous salaries and benefits. Without joinder it is impossible to avoid liability on inconsistent theories; with joinder would come increased complexity and litigation costs for the directly injured parties.

One may, indeed, conceptualize the case as involving claims on a single quantity of wealth—the increased consumer and

producer surplus that a thriving Laker would have generated.[14] The risks of duplicative recoveries on inconsistent theories are in no substantive way different from those risks in *Illinois Brick*. The Court regarded this concern as relevant even to *Associated General*, where the obscurity of the claim left some uncertainty as to just how plaintiffs' claims would relate to those of the direct victims. 459 U.S. at 544-45, 103 S.Ct. at 911-12. Here, more clearly than there, allowance of the suit would load the direct victims' action with costly excess baggage.

Nor is it an answer that Laker and its passengers have already settled their claims. Standing must be determined by uniform principles, not by accidents of sequence. A rule opening the door to marginal plaintiffs after settlement would virtually force defendants not to settle until all possible complainants were brought into the action or until the statute of limitations had run. Such behavior would clearly make it more difficult to prosecute antitrust violations and "undermine[ ] the effectiveness of treble-damages suits." *Associated General*, 459 U.S. at 545, 103 S.Ct. at 912. Besides, allowance of the present suit would unequivocally expose defendants to the risk of multiple liability, an alternative the Court has emphatically rejected. *Illinois Brick*, 431 U.S. at 730-31, 97 S.Ct. at 2066-67 (citing *Hawaii v. Standard Oil Co.*, 405 U.S. 251, 264, 92 S.Ct. 885, 892, 31 L.Ed.2d 184 (1972)). *See also id.* at 731 n.11, 97 S.Ct. at 2067 n.11 (recognizing that risk of multiple liability is particularly great where some parties settle).

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14 The extra producer surplus (especially for purposes of this case) includes any increments in plaintiffs' wage income over what they would have been able to earn without Laker's presence in the market. A worker is of course a producer. The wage necessary to attract the marginal worker sets the wage of the inframarginal workers. The latter enjoy producer surplus consisting of the difference between the prevailing wage and the wage necessary to attract them to the jobs in question. As already noted, the survival of Laker would under some circumstances increase that wage. Thus the producer surplus at issue in Laker's survival encompasses the surplus not only of Laker but also of the inframarginal workers. Ascertainment of the likely allocation of total producer surplus between these (and other suppliers as well) would be a complex task, to say the least.

The controlling factors under *Associated General* compel the conclusion that plaintiffs lack standing.

III.

Before the District Court defendant Union de Transports Aeriens ("UTA") moved for sanctions against plaintiffs' attorney for signing a complaint containing false allegations in violation of Federal Rule of Civil Procedure 11. Plaintiffs' complaint, which was prepared under extreme time pressures, alleged that UTA competed with Laker in the transatlantic market. In fact, UTA's only service originating in the United States was between Los Angeles and Tahiti. When UTA called the error to plaintiffs' counsel's attention, he did not acknowledge the inaccuracy but instead seized the offensive. He claimed that UTA had raised a matter outside of the pleadings; accordingly, if the court considered UTA's allegations, it would turn UTA's pending motions to dismiss into a motion for summary judgment, thereby justifying discovery by plaintiffs. Within a short time thereafter, however, plaintiffs' counsel amended the complaint to remove the inaccuracy.

The District Court denied UTA's motion without explanation in a one-sentence footnote. Although the District Court's treatment of this matter was lamentably terse, we may overturn its ruling only if it abused its "wide discretion" to determine whether grounds exist to support Rule 11 sanctions. *Westmoreland v. CBS, Inc.*, 770 F.2d 1168, 1174 (D.C. Cir. 1985). The record is not strong enough for us to find an abuse of discretion.

The decision below is

Affirmed.

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Civ. A. Nos. 86-0304, 86-0629

June 30, 1986

DAVID WEAVER ADAMS, et al., *Plaintiffs*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., et al., *Defendants*.

JOHN ERIC CLIFTON, et al., *Plaintiffs*,

v.

PAN AMERICAN WORLD AIRWAYS, INC., et al., *Defendants*.

MEMORANDUM

HAROLD H. GREENE, *District Judge*.

The instant action is the fourth antitrust suit growing out of the collapse of Laker Airways.[1] The first, and principal action (Laker I) was brought in this Court by Laker against Pan American Airways, TWA, British Airways, British Caledonian Airways, Swissair, Lufthansa German, McDonnell Douglas, Belgian World Airways, Royal Dutch Airways, Union de

1 This action actually represents two separate lawsuits, *Adams v. Pan American World Airways*, C.A. 86-0304, and *Clifton v. Pan American World Airways*, C.A. 86-0629, consolidated on March 3, 1986 by this Court. For practical purposes, however, this is a single action and will be referred to as such in this Memorandum.

Transports Aeriens and Scandinavian Airlines System.[2] Following complex pretrial motions,[3] the parties agreed on a settlement, which yielded substantial payments to Laker's stockholders, its creditors, and its attorneys. A second lawsuit (Laker II)[4] was brought in this Court as a class action on behalf of individuals who claimed that they would have travelled to Great Britain on Laker Airways had it been in existence, but who used the more expensive conventional carriers instead following Laker's demise. This action was likewise settled.[5] The defendants established a fund from which individual transatlantic travellers during a certain period could draw for coupons which reduced transatlantic fares on certain carriers during a five-year period. A third lawsuit (Laker III) filed in the central District of California, was brought on behalf of travel agents who claimed to have lost business as a consequence of the Laker demise brought about by defendants' alleged antitrust conspiracy. That action was dismissed for lack of standing.[6]

The instant action is brought on behalf of a number of former employees of Laker Airways who claim to have been damaged as a result of the same conspiracy that was before this

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2 Initially these were three lawsuits, but in the course of the litigation these actions were consolidated. The three cases were assigned civil actions numbers 82-3362, 83-0416, and 83-2791.

3 *See Laker Airways v. Pan American World Airways*, 604 F. Supp. 280 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 596 F. Supp. 202 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 577 F. Supp. 348 (D.D.C. 1983); *Laker Airways v. Pan American World Airways*, 568 F. Supp. 811 (D.D.C. 1983); *Laker Airways v. Pan American World Airways*, 559 F. Supp. 1124 (1983).

4 This action consisted of five lawsuits consolidated under the caption *In re Atlantic Air Travel Antitrust Litigation*, C.A. 84-1013.

5 Since this was a class action, the proposed settlement agreement in Laker II was approved by the Court following a public protest period and a hearing. *In re Atlantic Air Travel Antitrust Litigation*, C.A. 84-1013, Memorandum Order of March 18, 1986 (D.D.C.).

6 *Brian Clewer, Inc. v. Pan American World Airways*, CV 86-119 CBM, May 14, 1986 (Consuelo Marshall, J.).

Court in Laker I and II and before the court in California in Laker III.[7] The defendants have moved to dismiss.[8] The Court has carefully considered the motion, the briefs in support of the motion, in opposition thereto, and in reply, the various affidavits, as well as the arguments advanced at an oral hearing, and it has concluded that the motion must be granted.

Section 4 of the Clayton Act permits recovery of damages by individuals who are injured in their business or property by reason of a violation of the antitrust laws. Notwithstanding the broad language of Section 4, it is well established that persons who are only indirectly or tangentially affected by an antitrust violation may not recover under the antitrust laws. *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 534-35, 103 S.Ct. 897, 906-07, 74 L.Ed.2d 723 (1983). Indeed, it is safe to generalize that, barring unusual circumstances, only consumers or competitors in the market in which trade has been restrained have standing to bring a Section 4 action. *Id.* at 539, 103 S.Ct. at 909. As the Supreme Court noted in *Associated General Contractors*, the antitrust laws were enacted "to assure customers" the benefit of price competition, and its central interest is the protection of the economic freedom of "participants in the relevant market." *Id.* at 538, 103 S.Ct. at 908. Thus, it is not surprising that there is not a single reported case where employees of the victim of an antitrust violation have been allowed to recover for loss of employment resulting from the injury to the employer.

Plaintiffs rely to the contrary primarily upon two cases—*Radovich v. National Football League*, 352 U.S. 445, 77 S.Ct. 390, 1 L.Ed.2d 456 (1957), and *Blue Shield of Virginia v. McCready*, 457 U.S. 465, 102 S.Ct. 2540, 73 L.Ed.2d 149 (1982), but neither supports their argument. Radovich, a professional football player, claimed to have been personally

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7 The number of defendants in the various actions is not always precisely the same, but the principal defendants (Pan American, TWA, British Airways) appear in all the actions.

8 In addition, defendant Union de Transports Aeriens (UTA) has requested sanctions against plaintiffs' counsel.

blacklisted by all the employers in professional football, and the Supreme Court held that on account of this group boycott his complaint did state a cause of action. The Laker employees do not and cannot allege any kind of boycott; when their employer was forced out of business, they had to look for employment elsewhere, and in this endeavor some were successful and some were not. Similarly, the allegations in *McCready* are unlike the claims made here. The market in that case was that for psychotherapeutic services, and the plaintiff was both a consumer of the services and a competitor in the restrained market. *See Associated General Contractors*, *supra*, 459 U.S. at 538-39, 103 S.Ct. at 908-09. Plaintiffs here, of course, qualify under neither category. Indeed, plaintiffs do not even participate in the same market as the defendants. Laker and the airlines against which it brought suit were engaged in the market for air transportation; the plaintiffs in the instant action are sellers in the various labor markets in which the airlines are buyers.

The well-established proposition that only the direct victims of antitrust violations may recover is supported in this case by a number of relevant factors.

First. Any damages would, of necessity, be extremely speculative. That is so if only because it is not at all clear, nor could it be proved with any degree of certainty, how long Laker Airways would have been in business even if there had been no antitrust conspiracy. The airline industry has been quite volatile in recent years; Laker's collapse occurred when other airlines were losing money; and mergers and bankruptcies have occurred with some frequency. Thus, it is not certain how long Laker would have operated, and thus how long the plaintiffs would have had employment with Laker. Beyond that, each of the plaintiffs would be faced with a second level of uncertainty with regard to his individual losses—how long he would have been employed by Laker Airways or any other airline, at what salary, with what seniority, with what job security, with what

fringe benefits, and the like. Finally, plaintiffs also request damages for emotional distress—an item particularly difficult to quantify in this type of case.

Where demonstration of each plaintiff's injury and damages promises unduly long and complicated proceedings involving massive evidence and complicated theories, antitrust standing is likely to be denied. *See Hanover Shoe, Inc. v. United Shoe Machinery Corp.*, 392 U.S. 481, 493, 88 S.Ct. 2224, 2231, 20 L.Ed.2d 1231 (1968); *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 97 S.Ct. 2061, 52 L.Ed.2d 707 (1977); *McCready*, *supra*, 457 U.S. at 475 n.11, 102 S.Ct. at 2546 n.11; *Associated General Contractors v. Carpenters*, *supra*, 459 U.S. at 542-44, 103 S.Ct. at 910-12.

Second. As indicated above, the instant action is not the first to seek damages arising from the collapse of Laker Airways. The first lawsuit provided compensation to the stockholders, the creditors, and their attorneys; the second awarded compensation to would-be travellers on Laker; and the third lawsuit (unsuccessfully) sought damages for travel agents. All the lawsuits assumed high profits by Laker in spite of its low fares, and complex apportionment of the (assumed) revenues would have to take place in the event the instant action were permitted to proceed. It is to be noted, too, that these plaintiffs, as Laker employees, were also creditors and entitled to share in the proceeds of the settlement of the first Laker action.

Third. As stated above, the principal lawsuit arising out of the collapse of Laker Airways (Laker I) was settled, and so was the action on behalf of the transatlantic travellers (Laker II). Indeed, settlement without trial is common in major antitrust actions, and it is particularly to be preferred where, as here, difficult and delicate problems arising from conflicting national laws and policies are involved, calling in the end for

direct confrontations between governments and courts.[9] Yet defendants in such lawsuits are unlikely to enter into settlements if each such settlement can immediately be followed by a new treble damage lawsuit based on the same allegations as the first, the only real distinction being that some new group of alleged victims is bringing the action.[10]

For the reasons stated, defendants' motion will be granted[11] and the action will be dismissed.

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9 *See Laker Airways v. Pan American World Airways*, 604 F. Supp. 280 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 596 F. Supp. 202 (D.D.C. 1984); *Laker Airways v. Pan American World Airways*, 577 F. Supp. 348 (D.D.C. 1983); *Laker Airways v. Pan American World Airways*, 559 F. Supp. 1124 (D.D.C. 1983).

10 None of these obstacles is overcome by plaintiffs' allegations in the complaint that defendants intended to injure them. *See Associated General Contractors v. Carpenters, supra*, 459 U.S. at 537, 103 S.Ct. at 908.

11 However the Court denies defendant UTA's request for sanctions.

Plaintiffs:

David Weaver Adams, Edgar Hubert Adams, Sandra Alice Adcock, Mohamed Salim Akram, Jack G. Allum, Richard Andrews Anderson, Stephen John Anderson, Malcolm Bruce Anderton, Geoffrey Sigurd Andreasen, Geoffrey William Ansell, Michael Fredric Ashby, Richard Leslie Axby, Geoffrey Baggaley, Alan Frank Bampton, Anthony Owen Barber, Anne Louise Todd Barrett, Richard Hugh Barton, Alfred George Batchelor, Michael George Bealch, Donald Lawrence Beattie, Gerard Rene Yvon Bergot, Nicholas Adrian Collier Bevan, Colin Bicknell, Allan Gordon George Blake, Aubrey Denis Blake, Colin Blake, George William Blewett, Anna Blonstein, Simon Kenneth Carnon Boston, Harry Bowden-Smith, Christopher James Boyle, Beverley Janine Blum Boyle, Stephen Brand, Michael Stuart Bree, Geoffrey John Brookes, Raymond Peter Brown, Donald Bryant, Keith Bullock, Kurt Bunce, William Henry Laurence Bunce, Timothy Joseph Burnett, Edward Thomas Burns, Pamela Jane Burtles, John Francis Byrnes, Cuthbert Calixte, David Edward Carter, Eric John Carter, Shelley Thea Streatfield Carter, Geoffrey Bryan Cartner, Keith Anthony Castle, Michael John George Cater, Ian Chalmers, Harold Charles Chapman, Grenville Norman Church, John Henry Kerswell Clark, Gerald Alfred Clifton, John Eric Clifton, Robert Gordon Cockerill, Albert Ernest Coleman, Robert Douglas Coles, Alfred Collens, Patrick John Connington, Peter Cort, James O. Court, David William Coxhill, Carolyn Barbara Craddock, P. Cremin, Trevor Cresswell, William John Cronin, Robert Peter Gordon Crooke, Robin Ian Kenneth Cross, Anthony Joseph Cruz, Terence Alan Curry, Jack Cuthew, Roderick Trevor Daniels, Michael John Davies, Timothy Alfred Davies, Ian Charles Deloford, George William Devall, Jonathan Christian Devaux, Gregory B. Dix, Jean Docherty, Myriam Jeanne Georgette Dorman, Ronald Drakeford, Theresa M. Dugandzic, Linda A. Earls, Kenneth William Edwards, Martin Emery, Donald James Evans, Lawrence Evans, K.V. Fairbrother, Michael George Farmer, Francis James Fawcus, Terence Arthur Fen-

some, Edward Jock Ferrier, John Beverley Finbow, Duncan Stanley Fisher, Michael John Flake, William James Forrest, Judy Patricia Fortune, Murray Kirkham Fullarton, John Leonard William Fuller, Roger L. Fulljames, Robert James Fulton, Cormak Keven Gantly, Richard Hugh Gardner, Brian Terence Gerry, William George Gevaux, Colin Francis Glover, Claire Elizabeth Godden, David John Godwin, Roger Goff, John Francis Goodall, Reginald Charles Tig Gow, Clive Frederick Greatorex, John Alan Greenhead, Gordon Stewart Grierson, Nina Pamela Griffin, Stephen Thomas Gurton, Carolyn Irene Guy, David John Christopher Hall, Derek Charles Edward Harper, Ralph Frank Harper, Malcolm Charles Stuart Harris, Alan George Harrison, Jason Archibald Harrison, Maurice Anthony Hart, James William Hartley, Fred Haslam, Brian Allan Hay, Raymond George Hayward, Raymond John Hazzard, Stephen Charles Heffer, Alan Collis Hellary, Michael Houghton Hewitt, Peter Grant Hill, Peter Jeremy Hobbs, Peter Leonard Hook, Ronald Samuel John Hook, Eric Wynne Hopkins, Ivor Stephen Howard, Vaughan Richard Bonnell Howell, Michael Keith Hubbard, Bernadette Anne Hughes, Graham Frederick Humberstone, Garnet Richard Hunt, Peter John Hutley, Timothy John Hutton, Keith James, Stephen James, John C. Jarvis, Alan Charles Jenkins, Martin Stewart Jones, Russell Clement Jones, Betty Kelly Judge, Colin Kaletsky, Claude Keebe, Thomas F. Keely, Ian Philip Kelly, Anthony Brian Kennedy, J.W. Kindleysides, Peter Ilda Klesnil, John Alan Knight, Nick Koutsis, Graham Philip Lamb, Anthony Stuart Lighton, Michael John Limpkin, Ralph Brian Kneen Lines, Philip Patrick William Lowe, Anthony Machin, Patrick John MaClaughlin, Marcus MaClean, Paul Allan Mansbridge, Christine Irene Manson, James McGregor Conlogue Manson, Robert John Marsh, Geoffrey Caselton Martin, Godfrey Donovan Mason, Edward Paul Maspero, Peter Alan May, Philip Alan McCartney, John McClennan, Allan Charles McCormack, Katherine McDonald, Nuala Ann McGowan, Melvyn Henry McKenzie, Ian McLean, Nigel Justin McLean, William Wood McNab, John Richard Mealor, Henry John Meaney, Terence John Michaels, Leonard Francis

George Middleton, Ian Gordon Milne, Anthony James Murphy, Brian George Murphy, George Bancroft Newby, Sandra Anne Newby, Brian Newman, Adrian Keith Nicholl-Morris, Andrew Malcolm Noller, Malcolm Edward Norris, Donald Nelson Osborn, Robert Winston Osborne, John Richard Page, Cyril Hugh Palmer, Terence Hugh Peacock, Peter Pearman, Ann Elizabeth Pelham, Anthony James Pelham, Richard Francis Pickles, Robert Edward Pitts, Anthony James Poirrier, Joy Ann Poirrier, Jeffrey Brian Price, Peter Christopher Price, Truda Jill Proctor, Christopher Sigfried Radford, Desmond Harold Randall, David Frederick Randyll, Barry Norman Rawlins, David Clarence Read, Lorna Renner, Frederick William Richardson, John Leonard Richardson, Albert Edward Riches, Michael William Robertson, B.M.O. Robinson, Frank William Robinson, Robert William Robinson, Peter Alban Rockhill, Hugh Stewart Ross, Henry Charles Runacres, Brian Edward Harry Russell, Theresa E. Ryan, Derek Frank Salmon, Alex Sanchez, Brian Victor Sandford, Frank Roy Scholtka, Douglas Brian Scott, Michael Ormond Searle, Robert John Selmes, Peter Michael Shaw, Douglas Frederick Sibley, John Simpson, Andrew David Sims, Kenneth James Sinclair, Timothy Hepburn Sindall, Rosemary Skegg, Geoffrey Skelton, John Derek Skelton, Douglas A. Smith, Kingsley Smith, Rodney Smith, George E. Spencer, John Jerrard Spouse, Gregory Miles Stapleton, Richard Patrick William Steele, Michael Timothy Stent, Andrew Toby Satchwell Stevenson, John Gerard Steward, Jane Helen Stone, Geoffrey Norman Street, Anne Elizabeth Stroud, Martin Robert Brandon Sumner, Graham Richard Swift, John Frederick Tayler, David Marshall Taylor, Kenneth John Taylor, Glen Douglas Tennant, Michael Arthur Tester, Donald Thomas, Leslie Thomas, Peter Anthony Thompson, Walter Thompson, Christopher Tilney, Leslie Cambridge Toghill, Ronald Victor Townsend, Alistair John Travers-Wakeford, Norman Donovan Turnbull, Kim Susan Tyrrell, Cees Van Dooren, Susan Lynn Van Dooren, Elizabeth Variello, Michael John Veal, Alan Walter Ward, John Henry Ward, Robin Leonard Sidney Warren, Sheila K. Webb, Victor George Wells, Peter Anthony Wheeler, Brian Wheel-

house, Colin Guy White, Michael John Frederick White, Reginald N. White, Robert Ian White, Peter John Wittle, David Reginald Wiggins, Brenda Margaret Williams, Christopher John Hemmings Williams, David Anthony Williams, Helga Darien Williams, Thomas Frederick John Williams, David James Willis, Anthony Clifford Willson-Pepper, John Wilson, Jane Anne Wilton, Arthur Roy Winn, David William Woods, John Desmond Paton Worsley, Frank David Wright, Gillian Clare Wright, Violet Elizabeth Marion Wyatt, P.B. Yeo, Barbara Zientek.

Defendants:

Pan American World Airways, Inc.
Trans World Airlines, Inc.
British Airways Plc
Deutsche Lufthansa Aktiengesellschaft
Swissair, Swiss Air Transport Company Limited
British Caledonian Airways Limited
McDonnell Douglas Corporation
McDonnell Douglas Finance Corporation
Sabena, Belgian World Airlines
KLM Royal Dutch Airlines
Scandinavian Airlines System
Linee Aeree Italiane, S.p.A.
Iberia Airlines of Spain

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 82-3362

LAKER AIRWAYS LIMITED,

Plaintiff,

v.

PAN AMERICAN WORLD AIRWAYS, INC., *et al.*,

Defendants.

Civil Action No. 83-0416

LAKER AIRWAYS LIMITED,

Plaintiff,

v.

SABENA, BELGIAN WORLD AIRLINES, *et al.*,

Defendants.

Civil Action No. 83-2791

LAKER AIRWAYS LIMITED,

Plaintiff,

v.

UNION DE TRANSPORTS AERIENS, *et al.*,

Defendants.

ANSWERS OF PLAINTIFF LAKER AIRWAYS LIMITED TO FIRST SET OF INTERROGATORIES OF DEFENDANT UNION DE TRANSPORTS AERIENS TO PLAINTIFF LAKER AIRWAYS LIMITED

* * *

Interrogatory No. 5: State whether you contend that UTA at any time "offer[ed] . . . high-cost service at prices below the cost of those services" in order to "destroy transatlantic charters and Laker's scheduled Skytrain service." If you do so contend:

a. State the basis for your contention;

b. State when such services were offered;

c. State on what routes such services were offered.

Response to Interrogatory No. 5: No.

Interrogatory No. 6: State whether you contend that UTA agreed that it would charge fares that would result in its "short-term financial losses" with the intention of recouping such losses by raising prices after elimination of charter services and Laker's scheduled Skytrain service. If you do so contend:

a. State the basis for your contention;

b. Specify all persons with whom UTA so agreed and the fares agreed to;

c. State when UTA so agreed;

d. State whether you contend that, but for such agreement, Laker would not have ceased operations.

Response to Interrogatory No. 6: No.

* * *

Interrogatory No. 9: State whether you contend that UTA was one of the "European IATA members, including defendants SAS, [which allegedly] found that Laker was attracting many passengers traveling between Continental Europe and the United States, thereby competing with those airlines and putting downward pressure on their fares." If you do so contend, state the basis for your contention.

Response to Interrogatory No. 9: No.

Interrogatory No. 10: State whether you contend that Laker was competing with UTA and putting downward pressure on its fares. If you do so contend, state the basis for your contention.

Response to Interrogatory No. 10: No.

Interrogatory No. 11: State whether you contend that Laker held licenses to operate any route on which UTA operated. If you do so contend:

a. State the basis for your contention;

b. Identify the routes;

c. State the date on which each license was granted.

Response to Interrogatory No. 11: No.

* * *

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Dated: September 18, 1984